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October 15, 1998

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Magalie Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of the Pay Telephone Reclassification
and Compensation Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

Dear Ms. Salas:

Enclosed for filing in this docket are the original and one copy of a letter to Kathryn Brown. I sent this letter to Ms. Brown on behalf of the RBOC/GTE/SNET Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902.

Yours sincerely,

Michael Kellogg
Michael K. Kellogg

Enclosure

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October 15, 1998

Ms. Kathryn C. Brown
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Re: July 29, 1998 Inquiry Regarding New Services Test

Dear Ms. Brown:

I am writing on behalf of the RBOC/GTE/SNET Payphone Coalition in regard to the Inquiry Request filed by the State of New Jersey Department of Law and Public Safety on July 29, 1998 (attached hereto as Exhibit 1). That request posed the following question: "Whether it was the Commission's intention to require message units to meet the New Services Test for the tariffs filed with the state utility commissions." The Bureau has already answered this question informally in the negative;¹ we urge the

¹The Commission staff informed the Maryland Public Service Commission staff that "local business usage rates applied non-discriminatorily to all business users and determined by a state commission to be just and reasonable are not subject to the federal new services test." Data Request Response attached hereto as Exhibit 2. Based on these discussions, the Maryland PSC staff concluded that "state commissions do not need to affirm that message and measured usage that is priced identically for payphone providers and all business end users satisfy the federal new services test." Testimony excerpt attached hereto as Exhibit 3.

Ms. Kathryn Brown

October 15, 1998

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Commission to reaffirm that response in answering the New Jersey inquiry.

The local messages tariff that the New Jersey Department of Law and Public Safety referred to the FCC does not fall within either category of offering that the Commission has ordered must be separately tarified at the state or federal level. This tariff makes available local message units to all classes of business subscribers. In prior orders clarifying the scope of the tariffing requirements imposed by the Payphone Orders, the Bureau has identified two categories of offerings that are subject to the new services test. The first such category is the "basic network payphone line."² The second category is "unbundled features and functions," that is, "payphone-specific, network-based features and functions used in configuring unregulated payphone operations provided by PSPs or LECs."³ Local message units, standing alone, fall within neither of these categories.⁴

Message units are not among the "unbundled features and functions" that are subject to the tariffing requirement. The Commission gave several examples of the types of unbundled features and functions that must be tarified. They included "call blocking, coin supervision additive, coin signaling

²Order, Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, 12 FCC Rcd 20997, 21005, ¶ 17 (1997) ("April 4 Order").

³Id. at 21004-05, ¶ 17.

⁴In those cases where payphone lines are provided on a flat-rated basis -- that is, without separate message unit charges -- or on a combined basis -- that is, with some measure of usage included in the basic rate -- this issue does not arise. In those cases, the line charge would necessarily be reviewed along with the included usage.

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transmission additive, coin rating, original line number screening, and IDDD blocking."⁵ All of these are vertical features of the switch; message units, by contrast, represent the cost of usage of the local network itself. This indicates that "message units" cannot be considered an unbundled feature or function.

However, even if message units could be considered a "feature or function" of the network, to the extent that they are not "payphone-specific," they do not fall within the terms of the Commission's requirements. In the case of the tariff referred by the New Jersey Department of Law and Public Safety, payphone message units are identical to message units charged for business lines. Thus, message units -- if they can be considered a network feature or function at all -- are "generally available to all local exchange customers and are only incidental to payphone service."⁶ Moreover, message units are not "new," but are identical to the message units charged to business subscribers under previously existing tariffs.

The question whether message units may be considered part of the "basic network payphone line" admits of no single answer. There are at least two approaches that are appropriate. The first approach is to qualify only the set-rate portion of the payphone line under the new services test. The second approach is to qualify the set-rate portion of the line plus some usage charges corresponding to estimated average use.

⁵Id. at 21005 n.49.

⁶Id. at 21005, ¶ 18. In characterizing message units as "incidental," we use the term in the same sense it was applied to "touchtone service," that is, possibly essential to the provision of service, but not for any reason particular to the nature of payphone services.

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Both of these approaches are valid under the Commission's orders and rules. The payphone line may be used without the purchase of any local usage, just as it may be used without incurring toll charges or directory assistance charges. For example, if a PSP chose to install a coinless payphone, the PSP would incur no local usage charges for the use of the payphone, because the only local calls that could be completed using such a phone would be completed through an Operator Services platform. Moreover, as discussed above, usage represents the underlying costs of the local network; the line charge represents the cost of making that network available to the subscriber -- in the case of payphone lines, to the PSP. The set-rate portion of the payphone tariff provides this service completely, and no message units need be purchased for access to the local network to be in place.

At the same time, the vast majority of payphones installed are coin phones, which will incur local usage charges for completion of local sent-paid calls. It is therefore an appropriate alternative for LECs to treat payphone service as it is likely to be used, that is, together with some average measure of local usage.

The Commission has left it to state commissions to apply the new services test to basic payphone lines: "LECs are required to tariff basic payphone lines (smart, dumb, and inmate) at the state level only."⁷ LECs must therefore comply with applicable state requirements in the filing of their payphone tariffs. However, as far as federal law is concerned, the basic payphone line may qualify under the new services test either with or without some measure of usage included.

⁷Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 12 FCC Rcd 21370, 21373-74, ¶ 9 (1997).

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This conclusion is fully consistent with the purposes underlying the Commission's orders. The Commission intended to insure that payphone services would be "(1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory."⁸ By requiring the basic payphone line, either with or without some measure of usage, to qualify under the new services test, a state ensures that PSPs will have payphone specific services at cost-based rates. Likewise, such application of the test ensures that payphone services are free of subsidies from other services provided by the LEC. And, finally, because LEC PSPs are subject to the same charges as independent PSPs under the terms of the Commission's Computer III Order,⁹ there is no risk of discrimination.

If the Commission were to purport to require the application of the new services test to message units alone, this would threaten to involve the Commission in the tariffing of basic local service through the back door. Because the network usage represented by message units is presumably the same whether the subscriber is a PSP or a business subscriber, a State may be obliged under state law to require that the LEC charge PSPs and other business subscribers the same rates for usage. (This underlines the point that message units are neither "new" nor "payphone specific.") Thus, if the Commission provides the wrong answer on this question, it may in effect require a State to have LECs restructure their business tariffs generally. Such

⁸Order on Reconsideration, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 21233, 21308, ¶ 163 (1996).

⁹Report and Order, Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), 104 F.C.C.2d 958 (1986).

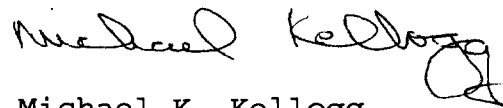
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intrusion on state regulation of quintessentially local service would be impossible to justify.

The Commission should therefore inform the State of New Jersey that message units standing alone are not subject to the Commission's new services test.

Sincerely,


Michael K. Kellogg

cc: James Schlichting
Lawrence Strickling
Jane Jackson
Dorothy Atwood
Judy Nitsche
Dan Abeyta
Glenn Reynolds

State of New Jersey

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July 29, 1998

Kathryn Brown, Chief
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1919 M. Street, N.W.
Washington, D.C. 20554

Re: Inquiry Request re: New Services Test

Dear Ms. Brown:

At the direction of the Honorable Louis McAfoos, A.L.J., who is presiding over several payphone matters pending before the New Jersey Office of Administrative Law, I submit the following question:

Whether it was the Commission's intention to require message units to meet the New Services Test* for the tariffs filed with the state utility commissions.

* The New Services Test was set forth in Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-933 (rel. Sept. 20, 1996); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996); and the subsequent waiver orders, Order, FCC 97-678 (rel. Apr. 4, 1997); and Order, FCC 97-805 (rel. Apr. 15, 1997).



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Kathryn Brown, Chief
July 29, 1998
Page 2

As hearings are scheduled to commence on September 22, 1998,
I respectfully request your prompt attention to this matter.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Caroline Vachier
Deputy Attorney General

CV:ds

c: Hon. Louis G. McAfoos, ALJ
Attached Service List

CASE NO. 8763

STAFF'S RESPONSE TO FIRST SET OF DATA REQUESTS FROM PEOPLES
TELEPHONE COMPANY

1. ON PAGE 14 OF THE DIRECT TESTIMONY OF ANN AMALIA DEAN, IT IS STATED THAT "STAFF HAD INFORMAL DISCUSSIONS WITH THE FCC STAFF AND CONCLUDED THAT STATE COMMISSIONS DO NOT NEED TO AFFIRM THAT MESSAGE AND MEASURED USAGE THAT IS PRICED IDENTICALLY FOR PAYPHONE PROVIDERS AND ALL BUSINESS END USERS SATISFY THE FEDERAL NEW SERVICES TEST."

- a. PLEASE IDENTIFY ALL PERSONS ON THE MARYLAND STAFF AND THE FCC STAFF WHO PARTICIPATED IN THE INFORMAL DISCUSSIONS REFERENCED ABOVE.

FCC Staff presented information on FCC Orders, including the Payphone Orders, at the National Association of Regulatory Commissioners Staff Communications Meetings. As a result of the presentation, Ann Dean had follow-up telephone discussions with various FCC Staff members. Don Bayeta discussed the carrier common line charge and Raj Kannan discussed the new services test as it applies to payphone features and business usage.

- b. WHAT DID THE FCC STAFF SAY THAT LED THE MARYLAND STAFF TO CONCLUDE THAT THE PUBLIC SERVICE COMMISSION OF MARYLAND DOES NOT NEED TO DETERMINE WHETHER BELL ATLANTIC'S MESSAGE OR MEASURED USAGE RATES FOR PAYPHONE PROVIDERS SATISFY THE NEW SERVICES TEST?

Local business usage rates applied non-discriminatorily to all business users and determined by a state commission to be just and reasonable are not subject to the federal new services test.

- c. PLEASE IDENTIFY OTHER REASONS, APART FROM SPECIFIC STATEMENTS BY FCC STAFF, THAT LED THE MARYLAND STAFF TO CONCLUDE THAT THE PUBLIC SERVICE COMMISSION OF MARYLAND DOES NOT NEED TO DETERMINE WHETHER BELL ATLANTIC'S MESSAGE OR MEASURED USAGE RATES FOR PAYPHONE PROVIDERS SATISFY THE NEW SERVICES TEST?

PROPRIETARY VERSION

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE)
INQUIRY INTO THE PAYPHONE)
TARIFFS OF BELL ATLANTIC -)
MARYLAND, INC.)

CASE NO. 8763

DIRECT TESTIMONY

OF

ANN AMALIA DEAN

on Behalf of the
Staff of the
Public Service Commission of Maryland

September 22, 1997

1
2 Q. DO YOU RECOMMEND ANY CHANGES TO THE BUSINESS MESSAGE
3 OR MEASURED USAGE RATE ASSOCIATED WITH PAYPHONE LINES?
4

5 A. No. First, BA-MD has not requested that the MDPSC
6 affirm to the FCC that the message or measured usage
7 rate satisfies the federal new services test. Second,
8 Staff had informal discussions with the FCC staff and
9 concluded that state commissions do not need to affirm
10 that message and measured usage that is priced
11 identically for payphone providers and all business
12 end users satisfy the federal new services test.
13 Third, the measured and message usage rates for
14 payphone providers and all business end users are
15 subject to price cap regulation. While Staff does not
16 believe that rate rebalancing should be an issue in
17 the proceeding because BA-MD's existing rates are
18 subject to price cap regulation and because these
19 existing services are not subject to the federal new
20 services test. Staff will respond to the direction of
21 the Hearing Examiner in filing reply testimony.
22

23 INTRASTATE PAYPHONE SUBSIDIES

24 Q. IS STAFF AWARE OF ANY EXPLICIT INTRASTATE PAYPHONE
25 SUBSIDY?
26